



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 14, 2011

Ms. Erin Alexander
Deputy General Counsel
Illinois Gaming Board
ERIN.ALEXANDER@igb.illinois.gov

RE: FOIA Pre-Authorization Request - 2011 PAC 12062

Dear Ms. Alexander:

We have received and reviewed the written notice from the Illinois Gaming Board of its intention to withhold certain information as exempt from disclosure under Section 7(1)(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.*) as amended.

On March 4, 2010 Joseph Ryan, formerly a staff reporter with the *Daily Herald*, submitted a FOIA request to IGB seeking copies of information relating to the legalization and implementation of video gaming in Illinois. On March 12, 2010, IGB denied Mr. Ryan's request pursuant to Section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a)) which exempts the inspection and copying of "information prohibited from disclosure by federal or State law or rules and regulations implementing federal or state law." Specifically, IGB asserted that the information is exempt pursuant to Section 6(d) of the Riverboat Gambling Act (RGA) (230 ILCS 10/1 *et seq.*).

IGB also asserted that the documents were exempt from disclosure pursuant to Section 7(1)(g) of FOIA (5 ILCS 140 7/(1)(g)) which exempts from inspection and copying "trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested"

This Office issued a determination letter on November 18, 2010. In that letter, this Office found that the IGB had not met its burden with regard to either the RGA or Section 7(1)(g). We did note, however, the following in the letter:

Notwithstanding, it appears that some portions of the responsive records may have constituted predecisional process materials solicited, obtained and utilized in formulating policies or actions relating to implementation of the new Video Gaming Act. As such, the Board may wish to consider whether some or all of the records denied under Section 7(1)(a) may be exempt under Section 7(1)(f) of the Freedom of Information Act.

On January 25, 2011, IGB submitted a Notice of Intent to Deny with this Office explaining that the documents are exempt from disclosure pursuant to Section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f)), which exempts from inspection and copying "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body."

Determinations

Prior to addressing the applicability of the 7(1)(f) exemption, we must note that a public body that receives a request for records and asserts that the records are exempt under either Section 7(1)(c) or Section 7(1)(f) of FOIA must, within the statutory time periods provided for response, submit written notice to the requester and to the Public Access Counselor of its intention to deny the request in whole or in part on that basis. 5 ILCS 140/9.5(b). For future reference, please be advised that IGB must submit a Notice of Intent to Deny pursuant to Section 7(1)(c) and Section 7(1)(f) to this Office within five days upon receipt of the FOIA request. *Id.*

Notwithstanding, in light of the procedural history of this request and IGB's initial reliance upon other exemptions under FOIA, IGB's request for approval of its decision to withhold the information pursuant to Section 7(1)(f) is approved. This Office has reviewed the documents that IGB seeks to withhold and we have concluded that the documents consist of handwritten notes, draft documents and correspondence that express opinions and recommendations about a particular course of action with regard to the legalization of video gaming. Accordingly, these documents properly fall within the scope of Section 7(1)(f).

If you have any questions or concerns, please contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Sincerely,



Matthew C. Rogina
Assistant Public Access Counselor

cc: Ms. Diane Dungey
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Mr. Joseph Ryan
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